

Appl. No. 09/899,552
Response dated June 13, 2006
Reply to Office Action of March 13, 2006

REMARKS/ARGUMENTS

Claim Amendments

By the present amendment, claims 1-2, 4 and 39-52 have been cancelled without prejudice. Claims 3, 5, 8, 11, 14, 16 and 21-24 have been amended.

Claim 3 has been rewritten in independent form and has been amended to include the subject matter of claim 4, which as mentioned above, has been cancelled. Further, the expression "multiplied with a co-efficient greater than 1", from claim 4, has been replaced with "given greater weight than changes in antibody response at other times". Support for this amendment is found, for example, on page 42, line 27, to page 43, line 7, of the application as filed, where it is clearly explained that "this is the period when lowered host resistance mechanisms are thought to contribute to increased occurrence of disease" and that "[t]he quantitative ranking of animals had to reflect the biological assessment of grouping animals based on the magnitude and direction of response to immunization". Accordingly it would be clear to a person skilled in the art that the Applicants intended that changes in antibody response during this time period (i.e. during the stress) should be given more weight in a method of ranking an immune response. It should be noted that support for this amendment to the subject matter of claim 4 (which now appears in claim 3) is also found in the parent application as filed (U.S. application no. 09/215,328, now U.S. Patent No. 6,287,564, filed on December 18, 1998; see, for example, page 20, lines 1-2, and page 35, line 8-18, of that application as filed).

Claim 5 has been amended to change its dependency from claim 4 to claim 3 in light of the cancellation of claim 4. Similarly, claims 8, 11, 14 and 16 have been amended to change their dependency from claim 1 to claim 3 in light of the cancellation of claim 1.

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Claims 21 and 22 have been rewritten in independent form.

Claims 22 and 23 have been amended to replace the expression "weighted with a co-efficient greater than 1" with "is given a greater weight than the primary response". Similarly, claim 24 has been amended to replace the expression "weighted with a co-efficient greater than 1" with "is given a greater weight than the primary response or quaternary response". Support for these amendments is again found, for example, on page 42, line 27, to page 43, line 7, for the reasons stated above with respect to a similar amendment to the subject matter of claim 4 (which is now present in claim 3).

Claims 3 and 5-24 have been examined in the present application.

The claim amendments have been made without prejudice and without acquiescing to any of the Examiner's objections. The Applicants reserve the right to file any of the cancelled subject matter in a divisional patent application. The Applicants submit that no new matter has been entered by the present amendment and entry of the amendments is respectfully requested.

The Office Action dated March 13, 2005 has been carefully considered. It is believed that the claims submitted herewith and the following comments represent a complete response to the Examiner's comments and place the present application in condition for allowance. Reconsideration is respectfully requested.

The Examiner's objections will be addressed in the order in which they appear in the Office Action.

The Examiner contends that claims 39-52 are directed to an invention that is independent from the invention originally claimed and these claims were withdrawn from consideration as being directed to a non-elected invention. While not agreeing with the

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Examiner, to expedite the allowance of this case, the Applicants have cancelled claims 39-52 in the present amendment.

The Examiner has objected to claims 1-3 and 6-20 under 35 USC 102(b) as being anticipated by Wagter et al. (J. Dairy Science, 1996, Vol. 79 (Suppl. 1, page 119). While not agreeing with the Examiner, the Applicants have cancelled claims 1-2 and have incorporated the subject matter of claim 4 in to claim 3. Claims 6-20 all depend, directly or indirectly, on amended claim 3. The Applicant submits that claims 1-3 and 6-20 are novel over the cited art.

In light of the above, the Applicants request that the Examiner's objection to claims 1-3 and 6-20 under 35 USC 102(b) be withdrawn.

The Examiner has objected to claims 4, 5 and 22-24 under 35 USC 102(b) as being anticipated by Applicants' own CA 2,255,423. The Examiner contends that claims in the present application drawn to weighting secondary and tertiary response with a coefficient "greater than one" only finds support in the present application as filed and therefore have a filing date of July 6, 2001.

As noted above, the subject matter from claim 4 has been incorporated into claim 3. Further the expression expression "multiplied with a co-efficient greater than 1", from claim 4, has been replaced with "given greater weight than changes in antibody response at other times". The Applicants submit that, as explained in detail above, support for limitation is found in the parent application for the present application (upon which the present application validly claims priority). In particular, the Examiner is invited to review page 20, lines 1-2, and page 35, lines 8-18 of U.S. application no. 09/215,328, (now U.S. Patent No. 6,287,564) as filed. It is clear that the concept of providing a greater weight to negative changes in antibody response that occur during the stress (i.e. the secondary and tertiary responses) was taught in this parent application. Since the parent application was filed on December 18, 1998, the claim

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date for claims 4, and 22-24, which contain this same limitation, is at least December 18, 1998. In fact, the same concept is found in provisional application (U.S. application no. 60/068,750) which was filed on December 24, 1997 and upon which the present application, as well as U.S. application no. 09/215,328, validity claim priority. In particular, the Examiner is invited to review page 25, lines 10-20, of U.S. application no. 60/068,750 as filed. Accordingly, the Applicant submits that the filing date for the subject matter of claim 4 and claims 22-24, is actually December 24, 1997. Since CA 2,255,423. was filed less than one year before the filing date of U.S. application no. 09/215,328, and has a filing date later than U.S. application no. 60/068,750, the Applicants submit that claim 3 (containing the subject matter of claim 4) and claims 22-24 are novel over this document.

With respect to claim 5, the Applicant notes that, contrary to the Examiner's contention, a weighting coefficient of "about 1.5" is supported in parent U.S. application no. 09/215,328, upon which the present application validly claims priority. The Examiner is directed to page 20, line 2, of that application as filed. Accordingly the filing date for the subject matter of claim 5 is December 18, 1998. Since CA 2,255,423. was filed less than one year before the filing date of U.S. application no. 09/215,328, the Applicants submit that claim 5 is novel over this document.

For the Examiner's convenience, the Applicants would be pleased to provide the Examiner with as filed copies of the both U.S. application no. 09/215,328 and U.S. application no. 60/068,750 upon request

In light of the above, the Applicants request that the Examiner's objection to claims 4, 5 and 22-24 under 35 USC 102(b) be withdrawn.

The Applicants acknowledge with appreciation the Examiner's indication that claim 21 would be allowable if re-written in independent form. The Applicants note that claim 21 has been rewritten in independent form in the present amendment.

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The Commissioner is hereby authorized to charge any deficiency in fees (including any claim fees) or credit any overpayment to Deposit Account No. 02-2095.

Early and favorable action on the merits is awaited. Should the Examiner deem it beneficial to discuss the application in greater detail, the Examiner is invited to contact the undersigned by telephone at (416) 957-1683 at the Examiner's convenience.

Respectfully submitted,

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